Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

No. 95-1268

October Term, 1995

State of Maryland,

Petitioner,

v.

Jerry Lee Wilson,

Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS WITH AFFIDAVIT OF INDIGENCY BY RESPONDENT'S FATHER

Pursuant to Rule 39 of the Supreme Court, Jerry Lee Wilson moves for leave to proceed in forma pauperis in filing the attached Petition in Opposition to Petition for Certiorari without prepayment of costs. Counsel for Respondent states the following in support of said motion:

1. This firm has tried on numerous occasions to contact the Respondent.

2. On each such occasion, this firm has been unable to locate the Respondent.

3. This firm was able to contact Respondent's father by mail, and received from Respondent's father, an Affidavit in support of Motion to Proceed in Forma Pauperis, attached, received May 20, 1996, attesting to Respondent's inability to pay the costs of this proceeding.

4. During the Respondent's pretrial motion at the Circuit Court for Baltimore County

as well as in the Petitioner's appeal to the Court of Special Appeals of Maryland, the Respondent was represented by the law firm of Turnbull, Mix & Farmer, which at all times represented the Respondent zealously and effectively.

5. At the conclusion of the appeal before the Court of Special Appeals of Maryland, the law firm of Turnbull, Mix and Farmer sent at least five letters to the Respondent or his family in an attempt to discuss the nature of the Respondent's case as well as inquire as to payment of attorney's fees. No response was received from the Respondent.

6. Due to the Respondent's nonpayment of fees and failure to contact his counsel, the law firm of Turnbull, Mix & Farmer was forced to terminate representation of the Respondent, with outstanding bills totaling approximately $5,000.

7. The Respondent was not represented by counsel in connection with the State of Maryland's Petition for Certiorari to the Court of Appeals of Maryland.

8. At no time has the Respondent attempted to contact this firm or Turnbull, Mix & Farmer in connection with his previous or pending cases.

9. Despite numerous attempts by this firm as well as his previous counsel, any efforts to communicate with the Respondent have been to no avail.

10. Due to the Respondent's lack of correspondence or communication, this firm has only been able to obtain an affidavit from the Respondent's Father in support of said Motion.

11. Leave to proceed in forma pauperis was not sought by the Respondent in any other court.

For the foregoing reasons, Respondent Jerry Lee Wilson respectfully urges this Court to grant said Motion for Leave to Proceed in Forma Pauperis.

Respectfully submitted,

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No. _____

October Term, 1995

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AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

I, ROBERT WILSON, being first duly sworn, depose, and say that I am the father or the respondent in the above titled case. In support of my son's motion to proceed on appeal, without being required to prepay fees, costs or give security therefore, I state that because of his poverty, he is unable to pay the costs of the proceeding or give security therefore.

I DO SOLEMNLY DECLARE AND AFFIRM, under the penalties of perjury, that the matters and facts set forth herein are true to the best of my personal knowledge and information.

Robert Wilson

Robert Wilson

Date 5-18-96

IN THE SUPREME COURT OF THE UNITED STATES

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CERTIFICATE OF SERVICE

This is to certify that the Motion for Leave to Proceed in Forma Pauperis with affidavit of Indigency of Respondent's Father, in the case of State of Maryland v. Jerry Lee Wilson, No. 95-1268, October Term, 1995, in the Supreme Court of the United States, was mailed first class, postage prepaid, to Gary E. Bair, Esq., Assistant Attorney General, Office of the Attorney General, 200 Saint Paul Place, Baltimore, Maryland, 21202, on this 20th day of May, 1996.

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IN THE SUPREME COURT OF THE UNITED STATES

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October Term, 1995

State of Maryland,

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Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

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QUESTION PRESENTED

When a police officer makes a lawful traffic stop, does the officer's automatic right to order the driver to exit the vehicle, pursuant to *Pennsylvania v. Mimms*, 434 U.S. 106 (1977), extend to passengers in the stopped vehicle?

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IN THE SUPREME COURT OF THE UNITED STATES

No. 95-1268

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Jerry Lee Wilson,

Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

Respondent, Jerry Lee Wilson, respectfully requests that this Court deny the petition for a writ of certiorari of Petitioner, the State of Maryland.

STATEMENT OF THE CASE

The Respondent accepts the Statement of the Case as presented by the State of Maryland, with the following exceptions:

The State of Maryland, in paragraph two of the Statement of the Case, claims that Officer Hughes witnessed "constant movement by the front and rear seat passengers," and further, that the passengers "continuously ducked below the seat level and then reappeared."

Petition at 3. However, as explained by the Honorable Charles E. Moylan, Jr., writing for a unanimous Court of Special Appeals of Maryland, Officer Hughes noticed only that the passengers of the vehicle had on "several occasions" ducked below the seat in the vehicle. *State v. Wilson*, 106 Md. App. 24, 27, 664 A.2d 1 (1995). Moreover, the State claims that "Hughes continued to see a lot of movement in the car, which made him hesitant to approach it." Petition at 3. However, no evidence exists in the record that either: (1) Officer Hughes witnessed a lot of movement in the car after the vehicle had pulled over, or (2) Officer Hughes was in any way hesitant to approach the vehicle once it had pulled over. 106 Md. App. at 27-28. Finally, the State explains that the Respondent exited the vehicle upon the officer's request only "[a]fter initially refusing to comply with the officer's request." Petition at 4. However, no such evidence exists that Respondent ever initially refused to obey Officer Hughes.

REASONS FOR DENYING THE WRIT

I. THE OPINION OF THE COURT OF SPECIAL APPEALS OF MARYLAND IS NOT CONTRARY TO SUPREME COURT PRECEDENT.

The State of Maryland, in requesting that a Writ for Certiorari be issued to the Court of Special Appeals of Maryland, has asserted that Judge Moylan's opinion is contrary to precedent of this Court. Petition at 8-10. That assertion is incorrect. Contrary to the State's suggestion, Judge Moylan's opinion completely comports with Supreme Court precedent. Judge Moylan (1) correctly analyzes *Pennsylvania v. Mimms*, 434 U.S. 106 (1977) (per curiam), *Rakas v. Illinois*, 439 U.S. 128 (1978), and *Michigan v. Long*, 463 U.S. 1032 (1983), (2) rectifies a linguistic error that his own court made in *Derricott v. State*, 84 Md.

App. 192, 578 A.2d 791 (1990), *rev'd*, 327 Md. 582, 611 A.2d 592 (1992),[1] and (3) distinguishes *Rakas* and *Long* from *Mimms* and from the case at bar. Judge Moylan's opinion, while chiding this Court for subsequently misstating the narrow *Mimms* holding in its opinions in *Rakas* and *Long*, correctly states that *Mimms*, *Rakas*, and *Long* are as distinguishable to the case at bar as they are to each other. Accordingly, neither *Rakas* nor *Long* should be read as interpreting *Mimms*.

This first reason for denying the writ includes: (1) an analysis of *Pennsylvania v. Mimms*, *Rakas v. Illinois*, and *Michigan v. Long*, (2) an analysis of Judge Moylan's opinion, speaking for the Court of Special Appeals of Maryland, and (3) a demonstration that Judge Moylan's opinion strictly follows, rather than deviates from, Supreme Court precedent.

A. Analysis of *Mimms*, *Rakas*, and *Long*.

1. *Pennsylvania v. Mimms*, 434 U.S. 106 (1977) (per curiam).

The facts of *Mimms*, as they pertain to the issue at bar, are straightforward. Mimms was driving a car with an expired license plate, in violation of Pennsylvania law. *Mimms*, 434 U.S. at 109. When police officers stopped the vehicle in order to issue a traffic summons, an officer approached the car and asked Mimms to alight from the car and produce appropriate documents. *Id.* at 107.

[1] In *Derricott*, the Court of Special Appeals of Maryland used the phrase "and/or any of the passengers" to describe whom police may legitimately order out of a lawfully stopped vehicle. Petition, Appendix A at 14a-15a. In his decision below, in *State v. Wilson*, 106 Md. App. 24, 664 A.2d 1 (1995), Judge Moylan refuted that proposition, explicitly stating that "[t]he overly broad inclusion of the phrase 'and/or any of the passengers' [in *Derricott*] was simply wrong. *Pennsylvania v. Mimms* did not stand for so broad a proposition." Petition, Appendix A at 15a.

At issue in *Mimms* was the officer's order that Mimms alight from the vehicle. This Court framed the *Mimms* issue with specificity, stating that "we need presently deal only with the narrow question of *whether the order to get out of the car, issued* [to the driver] *after the driver was lawfully detained, was reasonable and thus permissible under the Fourth Amendment*," *Mimms*, 434 U.S. at 109 (emphasis added), even though "the officer had no reason to suspect foul play from the particular driver at the time of the stop, there having been nothing unusual or suspicious about his behavior." *Id.* This Court's holding was similarly specific:

> Contrary to the suggestion in the dissent of our Brother Stevens, we do not hold today that 'whenever an officer has an occasion to speak with the driver of a vehicle, he may also order the driver out of the car.' *We hold only that once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures.*

Id. at 111 n.6 (emphasis added).

In reaching its holding, this Court reviewed "'the reasonableness . . . of the particular governmental invasion of a citizen's personal security,'" *Mimms*, 434 U.S. at 109 (quoting *Terry v. Ohio*, 392 U.S. 1, 19 (1968)), by "'[balancing] between the public interest and the individual's right to personal security free from arbitrary interference by law officers.'" *Mimms*, 434 U.S. at 109 (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975)). This Court thus balanced society's interest in police officer safety with the its interest in the *driver's* personal liberty, occasioned not by the initial lawful stop, but by the subsequent order to alight from the car.

This Court reasoned that because the officers had "already lawfully decided that the

driver [should] be briefly detained," *Id.* at 111 (emphasis added), any "additional intrusion [could] only be described as de minimis." *Id.* This Court concluded that "[w]hat [was] at most a mere inconvenience [to the driver could not] prevail when balanced against legitimate concerns for the officer's safety," *Id.*, and that, therefore, Mimms's Fourth Amendment rights had not been violated.

For purposes of the case at bar, it is important to note that Mimms was not alone. The Mimms vehicle contained a passenger. After this Court acknowledged the existence of the passenger, when stating that "[t]he other occupant of the car was carrying a .32-caliber revolver," *id.* at 107, there is no further mention of the passenger in the entire opinion. The Court's opinion is bereft of discussion -- much less analysis -- of passengers' Fourth Amendment rights, either alone or when balanced against the needs of law enforcement. Rather, the majority's opinion focuses on the additional intrusion only upon "drivers"[2] and "suspects."[3]

The State of Pennsylvania likewise did not concern itself with the *Mimms* passenger. Pennsylvania argued only "that it [was] permissible to order the *driver* out of the car." *Id.* at 110 n.5 (emphasis added). Only in Justice Stevens's dissent is there any discussion of the rights of passengers in cars that have been legally stopped. *Id.* at 122-23 (Stevens, J., dissenting) ("Because the balance of convenience and danger is no different for passengers in stopped cars, the Court's logic necessarily encompasses the passenger.").

[2]"It was apparently [the officer's] practice to order all drivers out of their vehicles." *Mimms*, 434 U.S. at 109-10. "Establishing face-to-face confrontation diminishes the possibility . . . that the driver can make unobserved movements." *Id.* at 110. There is also reference to "driver side," and to the "driver's personal liberty." *Id.* at 111.

[3]"According to one study, approximately 30% of police shootings occurred when a police officer approached a suspect seated in an automobile." *Id.* at 110.

The fact that this Court did not address the issue of passengers' Fourth Amendment rights reinforces the view that (1) *Mimms* does not create an automatic right for a police officer to demand that a passenger of a lawfully stopped vehicle exit the vehicle, and, more importantly, that (2) the *Mimms* majority perceived the privacy rights of passengers and drivers to be dissimilar.

2. *Rakas v. Illinois*, 439 U.S. 128 (1978).

In *Rakas,* a police officer on a routine patrol received a radio call notifying him of a robbery, and describing the getaway car. *Rakas*, 439 U.S. at 130. "Shortly thereafter, the officer spotted an automobile which he thought might be the getaway car." *Id.* After following the car, he and other officers stopped the vehicle. There were four occupants in the car, all of whom were ordered out of the car, and all of whom complied. After the occupants left the car, the interior of the car was searched and weapons were seized. *Id.* Rakas did not own the automobile; he was not the driver; and he did not assert a possessory or property interest in the evidence that was seized. *Id.* at 129.

The facts and issues in *Rakas* are so different from those in *Mimms* that they do not, in any way, support a reading of *Mimms* beyond its specific holding. The issue in *Mimms* was whether the officer could order the driver out of his car after the initial legal stop for a traffic violation. The issue in *Rakas* was whether Rakas had standing to challenge the seizure of evidence obtained during a search of a third person's vehicle, absent any showing by Rakas of

either a legitimate expectation of privacy in the area searched, or a possessory or property interest in the automobile and/or the items seized. *Rakas*, 439 U.S. at 128.

After recognizing that "Fourth Amendment rights are personal rights which . . . may not be vicariously asserted," *id.* at 133-34, this Court held that, because Rakas asserted neither a property or a possessory interest in either the automobile searched or any items seized, nor any legitimate expectation of privacy in either the automobile or any place searched, his Fourth Amendment rights had not been violated. *Id.* at 128. Because Rakas's constitutional rights had not even been implicated, Rakas lacked standing to challenge the seizure of the evidence used against him. *Id.*

Mimms and *Rakas* are distinguishable for several reasons, and it is because these cases are distinguishable that no extension of the *Mimms* holding can be found in *Rakas*. First, the factual scenarios differ. *Mimms* involved a routine traffic stop, whereas *Rakas* involved the stopping of a vehicle whose occupants were suspected of a robbery, an inherently dangerous felony. The officers who stopped Mimms had no reason to suspect criminal activity or that Mimms or his passenger posed any danger to them. *Mimms*, 434 U.S. at 109. The *Rakas* stop, however, presented a situation in which the presence of weapons would typically be expected, thus posing a reasonable threat to the officer's safety.

Second, Mimms was a driver who challenged the detention, stop, or "seizure" of his person.[4] Conversely, Rakas was a passenger who challenged the "search and seizure" of property (weapons) taken from a vehicle, all of which belonged to third parties. Third, and

[4] *See United States v. Hensley*, 469 U.S. 221, 226 (1985) ("stopping a car and detaining its occupants constitute a seizure within the meaning of the Fourth Amendment").

most importantly, the entire *Mimms* opinion concerned the constitutionality of the police action in ordering Mimms out of his vehicle. The petitioners in *Rakas*, however, never challenged the constitutionality of being made to get out of the vehicle. This Court was unanimous on this point. *See Rakas*, 439 U.S. at 150-51 (Powell, J., joined by Rehnquist, J. (now C.J.), concurring) ("[Rakas asserted only] that [his] constitutionally protected interest in privacy was violated when the police, after stopping the vehicle and making [him] get out, searched the vehicle's interior"). *See id.* at 161 n.5 (White, J., joined by Brennan, J., Marshall, J., and Stevens, J., dissenting) ("Nor have petitioners chosen to argue that they were 'arrested' in constitutional terms as soon as they were ordered from the vehicle and that the search was a fruit of that infringement on their personal rights"). It is clear that the issue and the holding of *Mimms* were not even remotely applicable to *Rakas*.

Notwithstanding the distinctions between *Mimms* and *Rakas*, and thus the irrelevance of *Mimms* to the issue in *Rakas*, the *Rakas* concurrence, when referring to *Mimms*, stated: "Last Term, this Court determined in *Pennsylvania v. Mimms*, 434 U.S. 106 (1977), that *passengers* in automobiles have no Fourth Amendment right not to be ordered from their vehicle, once a proper stop is made." *Rakas*, 439 U.S. at 155 n.4 (Powell, J., joined by Rehnquist, J. (now C.J.), concurring) (emphasis added). What is most confusing about this statement is that passenger rights were not even discussed in the *Mimms* holding. Thus, the *Rakas* concurrence, without discussion or subsequent citation to *Mimms*, sua sponte substituted the word "passengers" for "drivers."

3. *Michigan v. Long*, 463 U.S. 1032 (1983).

In *Long*, after officers observed that Long's vehicle was traveling erratically and at an excessive speed, turned into a side road, swerved off the road, and stopped in a shallow ditch. The officers, upon arriving on the scene to investigate, did not have to order Long out of the car. Instead, "Long, the only occupant of the automobile, [alighted from the car on his own and] met the deputies at the rear of the car. The door on the driver's side of the vehicle was left open." *Long*, 463 U.S. at 1035-36.

This Court granted certiorari "to consider the narrow issue of the authority of a police officer to protect himself by conducting a *Terry*-type *search of the passenger compartment* of a motor vehicle during the lawful investigatory stop of the occupant of the vehicle." *Id.* at 1037 (emphasis added). The issue in *Long*, like the issue in *Rakas*, did not involve the *Mimms* issue. *Long* did not address the constitutionality of requiring a driver or a passenger to get out of a vehicle because Long had already alighted from the vehicle when the officers arrived on the scene.

In *Long*, this Court concluded that during a lawful investigatory stop, and even before a full custodial arrest is made,

> the search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possesses a reasonable belief based on 'specific and articulable facts which . . . reasonably warrant' the officers in believing that the suspect is dangerous and the suspect may gain immediate control of weapons.

Id. at 1049 (citations omitted). This Court found that the officers had a reasonable belief that Long posed a danger to them if he were permitted to re-enter his vehicle. *Id.* at 1050. This

Court's rationale was based on the holdings of past cases.[5] The Court stated:

> Our past cases indicate that protection of police and others can justify protective searches when police have a reasonable belief that the *suspect* poses a danger, that roadside encounters between police and *suspects* are especially hazardous, and that danger may arise from the possible presence of weapons in the area surrounding a *suspect*.

Long, 463 U.S. at 1049 (emphasis added).

Mimms and *Long* are distinguishable for several reasons. First, the factual scenarios differ. *Mimms* involved a routine traffic stop, while *Long* involved the stopping of a car that had been driven erratically, was speeding, and ended up in a ditch. This is significant because the aggregate facts gave the officers in *Long* cause to suspect that Long was "under the influence" and might pose danger to officer safety. *See id.* at 1032. Second, the issue involved is different. Long did not challenge his "detention" because Long had alighted from the car on his own accord. Instead, Long challenged only the "search and seizure" of his property.

In *Long*, in a fashion similar to *Rakas*, this Court misstated its prior narrow holding announced in *Mimms*. Specifically, the *Long* Court stated: "In *Pennsylvania v. Mimms*, we held that police may order *persons* out of an automobile during a stop for a traffic violation, and may frisk those *persons* for weapons if there is a reasonable belief that they are armed and dangerous." *Long*, 463 U.S. at 1047-48 (citations omitted) (emphasis added). Again, this Court, without discussion or subsequent citation to *Mimms*, sua sponte substituted a different

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[5] The Court analyzed, inter alia, *Pennsylvania v. Mimms*, 434 U.S. 106 (1977), *Adams v. Williams*, 407 U.S. 143 (1972), *Chimel v. California*, 395 U.S. 752 (1969), and *Terry v. Ohio*, 392 U.S. 1 (1968).

word i.e., "persons," for the word "drivers." Not only did the *Long* majority not use the word "drivers," it did not even use the word that the *Rakas* concurrence used, i.e., "passengers."

B. - Analysis of Judge Moylan's Opinion in the Court Below.

Cautioning against "extract[ing] too much meaning from *Pennsylvania v. Mimms,*" Petition at 7a; *State v. Wilson*, 106 Md. App. 24, 664 A.2d 1 (1995), Judge Moylan correctly stated the *Mimms* holding:

> The simple holding of *Pennsylvania v. Mimms* is that whenever a police officer stops a vehicle for a traffic violation, even of the most minor variety, it is reasonable for the officer to order the *driver* to alight from the vehicle before the officer proceeds to . . . take appropriate action.
>
> . . .
>
> The [*Mimms*] holding was very clear that the prerogative is automatic under such circumstances and that no individual or particularized suspicion that the *driver* might be armed is involved. . . . Once the lawfulness of the initial stop of the vehicle is established, nothing more need be shown on a case-by-case basis to justify the incremental intrusion of ordering the *driver* out of the vehicle.

Petition. at 7a-9a (emphasis added).

Judge Moylan also pointed out that "[i]n its opinion, [in *Mimms*] the Supreme Court made it clear that its focus was very narrow. . . . The only issue before the Supreme Court was the propriety of the [] act of ordering Mimms to step out of the vehicle after it had been stopped." *Id.* at 8a (citation omitted). Judge Moylan appropriately stated that *Mimms* "was completely silent on the police prerogative, if any, vis-a-vis a passenger." Petition at 9a. Judge Moylan stated further that once the existence of the passenger is noted by the *Mimms*

Court,[6] "the armed passenger dropped totally from sight and the opinion does not further allude to him [or other passengers] even obliquely." Petition at 9a. (citations omitted).

Judge Moylan deftly captured the essence of the Petitioner's argument: "The State does not simply argue that . . . *Mimms* should be extended to passengers; it argues that the *Mimms* principle has *already* been extended to passengers," Petition at 10a, by virtue of *dicta* in, inter alia, *Rakas* and *Long*. Judge Moylan's response to the State's argument is appropriate (even if colorfully outraged), as he justly criticizes the State's reliance on "the most *obiter* of *dicta*" which "should represent no more to us than the glib blandishments of a snake oil salesman, no matter who wrote them." Petition at 11a. Through this comment, Judge Moylan exposes, as groundless, the State's reliance on *Rakas* and *Long* as an obvious distortion of the *Mimms* holding.

In his analysis of *Long* and *Rakas*, Judge Moylan stated: "In *Michigan v. Long*, the Supreme Court was not remotely dealing with a *Pennsylvania v. Mimms* situation. [*Long*] was a case, rather, where there was undeniable articulable suspicion that an individual might be armed and dangerous. . . . The *Mimms* principle itself was not being considered." Petition at 11a-12a.

As to *Rakas*, Judge Moylan stated:

> The citation to *Rakas* is to a footnote in a concurring opinion. The issue for decision in *Rakas* had nothing to do with the police prerogative to order a driver or a passenger to alight from an automobile. It dealt exclusively with the standing of a 'mere passenger' to raise a Fourth Amendment challenge to the search of someone else's automobile.

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[6] Judge Moylan referred to the statement that "[t]he other occupant of the car was carrying a .32-caliber revolver." *Mimms*, 434 U.S. at 107.

Petition at 13a-14a. With regard to this Court's transformation of the word "driver" into the word "passenger," Judge Moylan stated: "The deceptively broad reference to 'passengers' was simply wrong. It should, more carefully, have been a more limited reference to 'drivers.' That distinction, however, was not remotely involved in the discussion and should not be given a significance that was never intended." Petition at 14a.

> Regarding this Court's word choices in *Rakas* and *Long*, Judge Moylan stated: [The writers did what] opinion writers sometimes do. On an immaterial issue and casually in passing, they characterized *Pennsylvania v. Mimms* as they remembered it, but they remembered it wrongly. They did not put down a pen in mid-sentence and run to the United States Reports for the obvious reason that the passing reference was not in any way the focus of consideration.

Petition at 15a.

C. Judge Moylan's Opinion in the Court Below Comports with Supreme Court Precedent.

As previously discussed, *Mimms* addressed only the "very narrow question of whether the order to get out of the car, issued [to the driver] after the *driver was lawfully detained*, was reasonable and thus permissible under the Fourth Amendment," *Mimms*, 434 U.S. at 109 (emphasis added), even when "the officer had no reason to suspect foul play from the particular driver at the time of the stop, there having been nothing unusual or suspicious about his behavior." *Id.* Accordingly, *Mimms* stands for the narrow proposition "that once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the *driver* to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures." *Id.* at 111 n.6 (emphasis added).

Clearly, Judge Moylan understood the narrow issue before the *Mimms* Court and the holding that flowed from it. He further understood how *Mimms* was distorted in the *dicta*

contained in both *Rakas* and *Long*. Judge Moylan respected the holding of *Mimms*. He also placed *Rakas* and *Long* into perspective with respect to *Mimms* and, therefore, with respect to the case at bar.

In addition, Judge Moylan stated: "Judge Bollinger [the suppression court judge] made no ruling that the circumstances in this case would not be sufficient, as a matter of constitutional law, to justify a sense of apprehension on the part of Trooper Hughes and appropriate preventive action by him." Petition at 32a. In so doing, Judge Moylan left undisturbed the trial court's findings of fact with respect to the presence, or lack thereof, of reasonable articulable suspicion on the part of the Trooper. This Court, similarly, should defer to the lower court's findings of fact.

In this Court's *dicta* in *Rakas* and *Long*, the Court misstated its narrow holding announced in *Mimms*. The State of Maryland has incorrectly attempted to take that impreciseness of language one step further, applying it to this case. The State of Maryland cannot fairly label this careless wording as "precedent," nor can it succeed in arguing that Judge Moylan must adhere to such impreciseness of language, particularly when it appears only in *dicta*. The only precedent that Judge Moylan was obligated to follow -- and did apply -- was the holding of *Mimms*. Respondent respectfully urges this Court to recognize that Judge Moylan neither distorted, nor disregarded, the clear distinctions between these three Supreme Court cases. Because Judge Moylan's decision was not contrary to precedent, but was consistent with precedent, this Court should defer to the trial court's finding of fact.

II. THE ISSUE PRESENTED IN THE PETITION HAS REMAINED LARGELY UNTOUCHED BY THE LOWER COURTS.

During the 19 years since this Court decided *Pennsylvania v. Mimms*, when considering all of the reported decisions within all of the state and federal courts, on only 61 occasions has a court had the opportunity to rule on the issue of whether the holding in *Mimms* should be extended to a passenger in a vehicle. This is an incredibly small amount of times that any court has addressed the issue of whether a police officer can remove a passenger from an automobile, without even reasonable suspicion, particularly in light of the multitude of cases that have come before courts involving the interaction of police officers and automobiles and/or the occupants of automobiles. The reason for such a low number is directly related to this Court's treatment and expansion of the exceptions to the Fourth Amendment's warrant requirement.

The great majority of cases involving the interaction between police officers and automobiles and their occupants are governed by sound legal principles. *See California v. Hodari D.*, 499 U.S. 621 (1991) (mere show of authority, without submission or physical contact, is not a "seizure" for Fourth Amendment purposes); *Illinois v. Rodriquez*, 497 U.S. 177 (1990) (police may search if consent is given by a person that the police officer reasonably believes has authority to give consent); *New York v. Harris*, 495 U.S. 14 (1990) (evidence obtained after an illegal search or seizure must be suppressed as a "fruit of the poisonous tree" if the taint has not been attenuated); *Michigan v. Long*, 463 U.S. 1032 (1983) (if there is reasonable suspicion that the individual is armed and dangerous, the police may conduct a protective sweep of any area in which a weapon may be contained); *New York v. Belton*, 453 U.S. 454 (1981) (police may contemporaneously search the entire interior of a vehicle, without a warrant, following a lawful arrest of its occupant); *Rakas v. Illinois*, 439 U.S. 128 (1978)

(only a person with a possessory interest has a reasonable expectation of privacy, such as to challenge the vehicle search); *Pennsylvania v. Mimms*, 434 U.S. 106 (1977) (per curiam) (police may require the driver of a vehicle to exit the vehicle based solely on an underlying valid stop); *South Dakota v. Opperman*, 428 U.S. 364 (1976) (officers may inventory a vehicle, pursuant to regulatory procedures, without a warrant); *Terry v. Ohio*, 392 U.S. 1 (1968) (police may conduct a pat down of the outside garment, i.e., conduct a stop and frisk, if they have reasonable, articulable suspicion as to the suspect); *Carroll v. United States*, 267 U.S. 132 (1925) (an officer may search an automobile without a warrant if probable cause exists to believe that the automobile contains evidence of a crime and there is no time to obtain warrant).

The District of Columbia has not yet decided whether *Mimms* should be extended to passangers in automobiles. A total of 27 of the 50 states have not yet decided the issue that Petitioner presents to this Court. A total of 91 of the 95 federal district courts have not yet decided this issue. A total of seven of the 11 federal circuit courts have not yet decided this issue. Thus, out of the possible 157 jurisdictions that could have addressed the issue presented by Petitioner, 126 have not found it necessary to decide whether this Court's decision in *Mimms* should be extended to passengers. The fact that during this 19-year period, 126 jurisdictions have not had the need to decide this issue is strong evidence that there is no need for this Court to decide the issue presented by Petitioner. The reason that so many jurisidictions have not needed to decide this issue is because almost all scenarios involving the interaction of the police with citizens and vehicles are controlled by other well-delineated case interpretations by this Court. Thus, this Court's Fourth Amendment jurisprudence has already

provided the means to ensure the safety of our police officers, while ensuring that the right to be free from unreasonable searches and seizures is protected.

Petitioners contend that "the lower federal and state court are sharply divided on its proper resolution". Petition at 10 (discussing application of the *Mimms* rule to passengers). Although at first glance this may appear accurate, a deeper analysis shows a different conclusion. Of the 31 federal and state jurisdictions deciding Petitioner's issue, 18 jurisdictions (14 states, two federal districts, and two federal circuits) have extended the *Mimms* holding to apply to passengers in a vehicle. *See Ruvalcalba v. City of Los Angeles*, 64 F.3d 1323 (9th Cir. 1995); *Canal Zone v. Bender*, 573 F.2d 1329 (5th Cir. 1978); *United States v. McCoy*, 824 F. Supp. 467 (D. Del. 1993); *United States v. Terry*, 718 F. Supp. 1181 (S.D. N.Y. 1989); *Doctor v. State*, 573 So. 2d 157 (Fla. App. 1991), *rev'd in part on other grounds*, 596 So. 2d 442 (Fla. 1992); *People v. Salvator*, 602 N.E.2d 953 (Ill. App. 1992), *appeal denied*, 610 N.E.2d 1273 (Ill. 1993); *Warr v. State*, 580 N.E. 2d 265 (Ind. App. 1991); *State v. Landry*, 588 So. 2d 345 (La. 1991); *People v. Martinez*, 466 N.W.2d 380 (Mich. 1991), *vacated on other grounds*, 483 N.W.2d 868 (Mich. 1992); *State v. Reynolds*, 775 S.W.2d 1 (Mo. 1988); *People v. Robinson*, 543 N.E.2d 773 (N.Y.), *cert denied*, 493 U.S. 966 (1989); *State v. Collins*, 248 S.E.2d 405 (N.C. 1978); *State v. Evans*, 618 N.E.2d 162 (Ohio 1993), *cert. denied*, 114 S. Ct. 1195 (1994); *Commonwealth v. Brown*, 654 A.2d 1096 (Pa.1995), *appeal denied*, 664 A.2d 972 (Pa. 1995); *State v. Soares*, 648 A.2d 804 (R.I. 1994); *Graham v. State* 893 S.W.2d 4 (Tex. App. 1994); *Bethea v. Commonwealth*, 419 S.E.2d 249 (Va. 1992), *aff'd on other grounds*, 429 S.E.2d (Va. 1993). Six states (including

Maryland) have found that extending *Mimms* to passangers is inappropriate. *See People v. Maxwell*, 254 Cal. Rptr. 124 (Cal. Ct. App. 1988); *State v. Becker*, 458 N.W.2d 604 (Iowa 1990); *State v. Wilson*, 106 Md. App. 24, 664 A.2d 1 (1995); *State v. Smith*, 637 A.2d 158 (N.J. 1994); *Johnson v. State*, 601 S.W.2d 326 (Tenn. Crim. App. 1980); *State v. Kim*, 711 P.2d 1291 (Haw. 1985). Thus, there is not a great discrepancy among the states and federal courts regarding this issue.

Of the six states rejecting an extension of *Mimms*, only three (Maryland, Iowa, and Tennessee) have expressly held that *Mimms* does not extend to passengers of a automobile. Those jurisdictions agree that this Court's prior decision in *Terry v. Ohio*, 392 U.S. 1 (1968), controls when determining the "reasonableness" of ordering a passanger from an automobile. Two of those six states (New Jersey and California) have expressly stated that, although a *per se* right to order a passenger to alight is not appropriate, a police officer "need point only to some fact or facts in the totality of the circumstances that would create in a police officer a *heightened awareness of danger* that would warrant an objectively reasonable officer in securing the scene in a more effective manner by ordering the passenger to alight from the car." *State v. Smith*, 637 A.2d 158, 167 (N.J. 1994) (emphasis added); *People v. Maxwell*, 254 Cal. Rptr. 124, 126 (Cal. Ct. App. 1988) (citing *People v. Padilla*, 183 Cal. Rptr. 97 (1982)) ("A legitimate concern for officer safety provides sufficient justification for asking a passenger to get of a car stopped for traffic violations."). Finally, of the six states holding that *Mimms* does not apply to passangers in an automobile, two have decided the issue on independent and adequate state grounds, thus preventing any review of those decisions by this

Court. *See State v. Kim*, 711 P.2d 1291, 1294 (Haw. 1985) ("Under Article I, section 7 of the Hawaii Constitution, a police officer must have at least a reasonable basis of specific articuable facts to believe a crime has been committed to order a driver out of a car after a traffic stop"); *State v. Smith*, 637 A.2d 158, 165 (N.J. 1994) ("Today we are deciding whether, and under what conditions, *Mimms* should be extended to passangers. We apply the balancing test required by the State and Federal Constitution."). Thus, the extent of a conflict among the jurisdictions is minimal, and, therefore, the extent of the need for this Court to address this issue, at this time, is not compelling.

Petitioner urges that this Court needs to extend *Mimms* for the purpose of ensuring the safety of police officers. Petition at 15-16. This Court, in its decision in *Mimms*, considered the issue of police officer safety during a routine traffic stop. "We think it too plain for argument that the stated proffered justification -- the safety of the officer -- is both legitimate and weighty." *Mimms*, 494 U.S. at 110. However, in *Mimms*, this Court balanced officer safety against competing Fourth Amendment rights, and held that a police officer was allowed to order a driver from an automobile, after stopping the driver for a traffic infraction, without some reasonable, articulable suspicion as to criminal activity. This line was drawn as to drivers only, notwithstanding the fact that a passanger was present in the automobile in *Mimms*.

Although officer safety is always a valid concern, Petitioner's request for a Writ of Certiorari should not be granted solely for this reason. The risk to an officer's safety is not, without more, heightened necessarily by the presence of a passenger in a car stopped in a routine traffic stop. In 1994, of the 76 officers feloniously killed, 11 officers were killed

during traffic pursuits or traffic stops. U.S. Department of Justice, *Uniform Crime Reports: Law Enforcement Officers Killed and Assaulted* 11 (1994). An analysis of the Summaries of Felonious Incidents reveals that of those eleven officers killed, only one was killed in a situation similar to the one at hand, i.e., by a passenger during a routine traffic stop. *Id.* 43-60. Furthermore, the total number of officers reported killed by passengers during routine traffic stops, for the years 1984, 1987, 1988, 1989, 1990, 1991, and 1992, was three.[7] More officers are injured during traffic stops by approaching motorists than by attacks from suspects within vehicles. International Association of Chiefs of Police National Law Enforcement Policy Center, *Motor Vehicle Stops: Concepts and Issues Paper* 3 (1992). In fact, the IACP, in formulating its recommendations on the issue of whether to order occupants out of the vehicle or to require them to remain inside the vehicle, stated: "Unless the officer orders the violator out of his vehicle for the purpose of conducting a sobriety check, to frisk the vehicle for weapons or for any other reason, the violator should normally remain in his vehicle." *Id.* at 4.

The reasons for ordering an occupant out of a vehicle would be those already decided by this court, i.e., reasonable suspicion. Otherwise, the IACP recommends that the occupants remain in the vehicle. "Where more than one individual emerges from the subject vehicle, officers must exercise particular caution to ensure that the situation does not escalate or get out of control." *Id.* "In this or in any other instance during a vehicle stop, officers should

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[7]An additional seven officers were killed, whose assailants were unknown, and four officers were killed in combined assaults by the driver and passenger. U.S. Department of Justice, *Uniform Crime Reports: Law Enforcement Officers Killed and Assaulted* 11 (1994).

remember that they can and should exercise their legal authority to order any or all individuals out of a vehicle if they feel their safety is threatened." *Id.* at 3. The recommendations in these guidelines instruct officers to initially control the situation by having the occupants remain in the vehicle, to evaluate each scenario independently, and to consider all the factors involved, and, based on the officer's comprehensive evaluation, determine whether or not to order an occupant out of the vehicle.

In sum, these guidelines instruct the officer to use a totality of the circumstances approach. Officers using this common sense approach should ordinarily have no need to order a passenger out of a vehicle. If, under the totality of the circumstances, the officer believes that safety is at issue, the officer will have a reasonable articulable suspicion on which to order a passenger to exit the vehicle. In light of the recommended police procedure and its rationale, designed to ensure officer safety, there is no need for this Court to create a rule extending the holding in *Mimms* to passengers.

The safety to the officer from vehicle traffic was also a major concern of this Court in its decision in *Mimms*. The hazard of accidental injury to an officer from passing traffic standing on the driver's side of the vehicle may also be appreciable in some situations. *Id.* at 111. However, the danger to officers is diminished greatly in the situation of an officer questioning or assisting a passenger in a vehicle. IACP National Law Enforcement Policy Center, *Motor Vehicle Stops*: *Model Policy* 1 (1991) (At the desired locations, the officer should signal the operator to stop at the *far right side* of the roadway or at the safest shoulder.) (emphasis added). Because most passengers are in the front passenger seat and most stops occur on the right side of the travel lane, the officer is protected from passing vehicles and the

ordering of the passenger out of the car for this reason is not justified.

III. THIS ISSUE IS NOT AN APPROPRIATE ISSUE FOR THIS COURT TO ADOPT A BRIGHT-LINE RULE.

With regard to the Fourth Amendment doctrine, "[a] highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagarly feed, but they may be 'literally impossible of application by the officer in the field.'" *New York v. Belton* 453 U.S. 454, 458 (1981) (quoting Wayne R. LaFave, *"Case-By-Case Adjudication" Versus "Standardized Procedures": The Robinson Dilemma*, 1974 S. Ct. Rev. 124, 141). However, hard-and-fast rules, with precise boundaries, applicable to all situations of a given type, regardless of variations in the facts of particular cases, are not appropriate for every Fourth Amendment situation.

Acknowledging this fact, this Court has recognized both (1) the need to provide guidance to the police and lower courts through bright-line rules or standardized procedures, and (2) the necessity to maintain flexibility through a case-by-case determination of the reasonableness of particular police pratices. This Court has set forth strict rules or standarized procedures in some cases. *See e.g., New York v. Belton*, 453 U.S. 454 (1981); *Michigan v. Summers*, 452 U.S. 692 (1981); *Dunaway v. New York*, 442 U.S. 200 (1979); *Robinson v. United States*, 414 U.S. 218 (1973). In other cases, this Court has established a flexible reasonableness-balancing analysis. *See, e.g, Terry v. Ohio*, 392 U.S. 1 (1968).

Even Professor LaFave, whose support for bright-line rules was quoted by this Court in *New York v. Belton*, has recognized that bright-line rules are not appropriate for all Fourth

Amendment scenarios. Wayne R. LaFave, *The Fourth Amendment in an Imperfect World: On Drawing 'Bright Lines' and 'Good Faith'*, 43 U. Pitt. L. Rev. 307, 323 (1982). In particular, the issue before this Court, of whether *Pennsylvania v. Mimms* should be extended to passengers, is not an area of the law in which any bright line rule would safeguard both Fourth Amendment rights and the safety of police officers.

Therefore, in order to determine when a bright-line rule is appropriate, Professor LaFave established four questions that should be put before any such rule is adopted by a court: (1) Does it have clear and certain boundaries, so that it makes case-by-case evaluation and adjudication unnecessary? (2) Does it produce results approximating those that would be obtained if accurate case-by-case application of the underlying principle were practicable? (3) Is it responsive to a genuine need to forego case-by-case application of a principle because that approach has proved unworkable? (4) Is it not readily subject to manipulation and abuse? *Id.* at 325.

In the instant case, the answer to all of these questions is "no." The State urges that this Court establish a bright-line rule, applying the rule that permits police officers to order drivers of validly stopped automobiles out of their vehicles, under *Pennsylvania v. Mimms*, equally to all passengers, of all vehicles, under all circumstances. Such a rule, on first blush, appears to have clear and certain boundaries, making case-by-case evaluation and adjudication unnecessary. However, such a rule is not so clear or certain as it frst appears. Unlike the sole driver, there may be no passengers, one passenger, or multiple passengers ranging in number from zero to six in most vehicles, and even more in minivans and buses. Which passengers would police officers be allowed to order out of the vehicle? Only the front

passenger? Both the front and the backseat passengers? Only the backseat passengers? Everyone in the car? The first row of people in a bus? All of the passengers on a bus? Can the officer order all passengers out of a vehicle during the day, or only at night when the officer's ability to see activity inside the vehicle is hindered?

Therefore, a bright-line rule, allowing police officers to order all passengers out of all validly stopped automobile, does not effectuate the State's purpose of protecting police officers. A police officer could clearly place himself in greater danger by keeping watch over six individuals roaming around outside a vehicle than six individuals confined to the interior of a vehicle.

Furthermore, passengers vary, not only in number, but also in age, expectation of privacy, and intimacy with the driver of the vehicle. That fact would provoke additional questions by the adoption of a bright-line rule. For example, police intrusion would more clearly necessitate a case-by-case adjudication in situations in which officers order elderly passengers, posing no apparent threat of violence, out of the vehicle in the pouring down rain or late at night. Similar adjudication would be warranted in instances in which the passengers are children or infants.

Such intrusion upon a passenger's Fourth Amendment protection is more pronounced and unreasonably invasive than that of the driver. There is a great distinction between the driver of a validly stopped vehicle and the passenger within the vehicle. Unlike the driver, who is in control of the vehicle, and in some way violates the law, thereby invoking a valid stop, the passenger has no control over the vehicle and presumptively commits no traffic offense. "The passenger may not be issued a traffic ticket or citation, let alone be subjected to

custodial arrest." *State v. Wilson*, 106 Md. App. 24, 43, 664 A.2d 1, 10 (1995). "The passenger is not required to furnish identification or any other documentation." *Id.* "The passenger is presumptively free to abandon the driver to the clutches of the law and hail a cab." *Id.* Thus, under many circumstances, a police intrusion of the passengers' Fourth Amendment rights can hardly be considered "de minimus," and would require some individualized evaluation and adjudication guided by Fourth Amendment principles.

With regard to Professor LaFave's second and third inquiries, a bright-line rule in this situation would not produce results approximating those that would be obtained in an accurrate case-by-case analysis. The State argues for a bright-line rule. However, police officers, based on their assessment of each situation -- and not the courts -- are in the best position to determine when their safety is threatened. Once a police officer is, or has reason to feel, threatened, a passenger can be ordered out of the vehicle, regardless of whether a bright-line exists. The officer feeling threatened would have articulable individualized suspicion to order the passenger to exit the vehicle. This situational evaluation is performed every day by police officers and has worked efficiently, without all passengers, or even the majority of passengers, being ordered out of their vehicle. However, if the State's bright-line rule were adopted, a case-by-case analysis would no longer be required. Arguably, the number of passengers being ordered out of their vehicles would be drastically different. Consequently, the results of a case-by-case analysis and a bright-line rule would be markedly different. Moreover, new bright-line rules should not be drawn when the existing doctrine is not causing serious problems in day-to-day practice. Accordingly, there is no demonstrated need to forego the current case-by-case analysis already being applied.

Finally, and addressing Professor LaFave's fourth threshold question, a bright-line rule in this situation is subject to manipulation and abuse. As Justice Stevens pointed out in his dissent in *Pennslyvania v. Mimms*, "to eliminate any requirement that an officer be able to explain the reasons for his actions leaves police discretion utterly witout limits." *Mimms*, 434 *U.S.* at 122. "Some citizens will be subjected to this indignity while others--perhaps those with more expensive cars, or different bumper stickers, or different colored skin--may escape it entirely." *Id.* This unfettered discretion would apply to passengers as well.

In addition, bright-line Fourth Amendment rules may fail in their mission of simplifying the administration of justice for essentially two reasons. Albert W. Alschuler, *Bright Line Fever and The Fourth Amendment*, 45 U. Pitt. L. Rev. 227, 231 (1984). First, establishing a specific rule for every possible Fourth Amendment encounter between police officers and citizens will inevitably result in the creation of so many rules that no one, especially police officers in the field, will be able to remember or properly use such rules. *Id.* Second, due to the diversity of the types of encounters between citizens and police officers, bright-line rules are ineffective due to their rigidity. While a rigid rule may be easily applied, the injustice that results from applying it to nonconforming situations will outweigh the gain in efficiency. *Id.*; Terence C. Gill, Note, *Regulating the Police in Investigatory Stops: A Practical Alternative to Bright Line Rules*, 59 S. Cal. L. Rev. 183 (1985).

Because Fourth Amendment encounters between the police and the public are simply too numerous and too varied to be subject to standardized procedures that will always dictate the appropriate police response, attempts to draft bright-line rules have proved unsuccessful. Gerald G. Ashdown, *Good Faith, The Exclusionary Remedy, and Rule-Oriented Adjudication*

in the Criminal Process, 24 Wm. & Mary L. Rev. 335 (1983). Such rules provide some guidance, but are incapable of addressing, in advance, all of the factual situations that police may encounter. *Id.; see also* Alschuler, *supra* at 227.

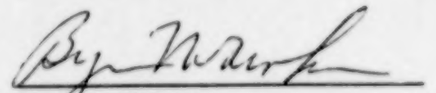
When the best rules that our powers can devise produce injustice often enough, we do well to abandon them even at the price of lawlessness. *Id.* When the appropriate blend of law and discretion cannot be determined 'in the large,' as in the instant case, the issue must be resolved 'in the specific,' by examining the facts and circumstances of a particular rule. Alschuler, *supra* at 227. *Mimms*, in conjunction with *Terry*, provides the balanced police descretion necessary to both ensure officer safety and to protect against Fourth Amendment violations. If the bright-line rule, as requested by the State, were to be adopted, on this issue, injustice would most often result. Countless individuals would needlessly have their Fourth Amendment protection violated every day. At some point, this degree of injustice has to outweigh the benefit of such a rule.

Thus, while it is extremely important that Fourth Amendment doctrine be expressed in terms understandable to the police, "the quest for clear rules must proceed with caution if reasonable and predictable results are in fact to be obtained." LaFave, *supra* at 333. "For as Justice Rehnquist has noted: 'Our entire profession is trained to attack 'bright lines' the way hounds attack foxes. Acceptance by the courts of arguments that one thing is the 'functional equivalent' of the other, for example, soon breaks down what might have been a bright line into a blurry impressionistic pattern.'" LaFave, *supra* at 333 (citing *Robbins v. California*, 101 S. Ct. 2841, 2854 (Rehnquist, J., (now C.J.), dissenting)).

CONCLUSION

For the foregoing reasons, Respondent, Jerry Lee Wilson, respectfully requests that the petition for writ of certiorari be denied.

Respectfully Submitted,



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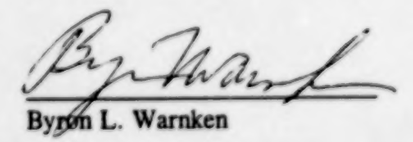
CERTIFICATE OF SERVICE

This is to certify that the (1) Motion for Leave to Proceed in Forma Pauperis, and (2) Brief in Opposition, in the case of State of Maryland v. Jerry Lee Wilson, No. 95-1268, October Term, 1995, in the Supreme Court of the United States, was mailed first class, postage prepaid, to Gary E. Bair, Esq., Assistant Attorney General, Office of the Attorney General, 200 Saint Paul Place, Baltimore, Maryland, 21202, on this 20th day of May, 1996.



Byron L. Warnken

ATTACHMENT A

JURISDICTION	MMMS PASSENGER EXTENDS (YES/NO)	# CASES	# REPORTED	# UNREPORTED
ALABAMA	N/A			
ALASKA	N/A			
ARIZONA	Probably	1	1	
ARKANSAS	N/A			
CALIFORNIA	NO	3	3	
COLORADO	Probably	1	1	
CONNECTICUT	Undecided	1	1	
DELAWARE	Fed - YES State - N/A	1	1	
D.C.	Undecided	3	3	
FLORIDA	YES	2	2	
GEORGIA	N/A			
HAWAII	NO			
IDAHO	N/A			
ILLINOIS	YES	1	1	
INDIANA	YES	1	1	
IOWA	NO			
KANSAS	Fed - Probably State - Undec.	2	2	
KENTUCKY	N/A			
LOUISIANA	YES	1	1	
MAINE	N/A			
MARYLAND	NO	1	1	
MASSACHUSETTS	Maybe	5	5	
MICHIGAN	YES	1	1	
MINNESOTA	Probably	2	2	
MISSISSIPPI	N/A			
MISSOURI	YES	2	2	

JURISDICTION	MMMS PASSENGER EXTENDS (YES/NO)	# CASES	# REPORTED	# UNREPORTED
MONTANA	N/A			
NEBRASKA	N/A			
NEVADA	N/A			
NEW HAMPSHIRE	N/A			
NEW JERSEY	NO	3	3	
NEW MEXICO	N/A			
NEW YORK	Fed - YES State - YES	4	4	
NORTH CAROLINA	YES	1	1	
NORTH DAKOTA	Probably	1	1	
OHIO	YES	10	5	5
OKLAHOMA	N/A			
OREGON	N/A			
PENNSYLVANIA	YES	3	3	
RHODE ISLAND	YES	2	2	
SOUTH CAROLINA	N/A			
SOUTH DAKOTA	N/A			
TENNESSEE	NO	1	1	
TEXAS	YES	3	3	
UTAH	Undecided	2	2	
VERMONT	N/A			
VIRGINIA	YES	4	4	
WASHINGTON	Undecided			
WEST VIRGINIA	N/A			
WISCONSIN	YES	1	0	1
WYOMING	N/A			

JURISDICTION	MIMMS PASSENGER EXTENDS (YES/NO)	# CASES	# REPORTED	# UNREPORTED
TOTAL STATES	**YES 14 NO 6 PROB. 4 MAYBE 1 UNDEC. 5 N/A 21**	60	54	6
TOTAL FEDERAL DIST. COURTS				
TOTALS	**YES 16 NO 6 PROB. 5 MAYBE 1 UNDEC. 5 N/A**	63	57	6
FEDERAL CIRCUIT COURTS				
1st	N/A			
2nd	N/A			
3rd	N/A			
4th	Maybe	2	1	1
5th	YES	1	1	
6th	Undecided			
7th	Probably	1	1	
8th	N/A			
9th	YES	1	1	
10th	Undecided			
11th	N/A			
Virgin Islands	YES	1	0	1
TOTAL FEDERAL CIRCUIT COURTS	**YES 3 NO 0 PROB. 1 MAYBE 1 UNDEC. 2 N/A 6**	6	4	2

JURISDICTION	MIMMS PASSENGER EXTENDS (YES/NO)	# CASES	# REPORTED	# UNREPORTED
TOTAL STATE, FEDERAL DISTRICT AND FEDERAL CIRCUIT COURTS	**YES 19 NO 6 PROB. 6 MAYBE 2 UNDEC. 7 N/A 21**	69	61	8